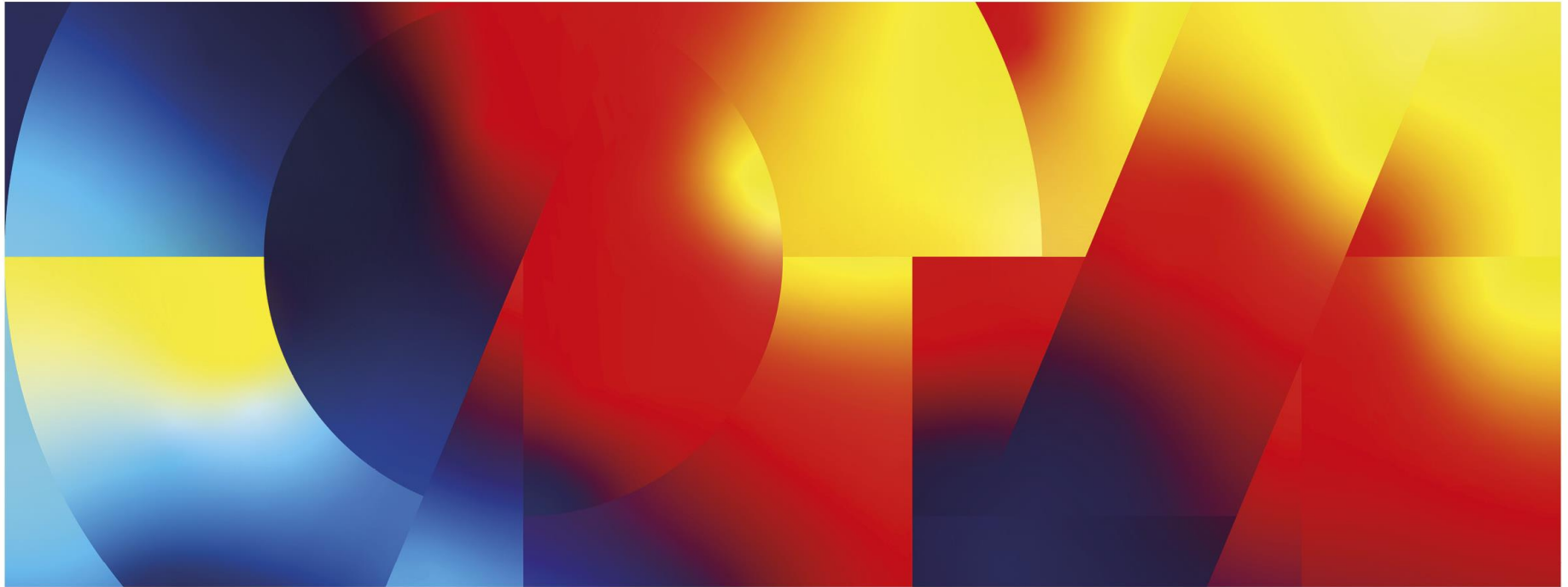


Guidance for Governors



Objectives

- Give you an understanding of governor roles and responsibilities
- Guidance on dealing with disciplinary and grievance procedures
- Case law update
- Update on education issues

Governor Duties

Types of school

School type	Employer	Board
Community, community special, voluntary controlled schools and maintained nursery schools.	Local authority (LA).	Governing body (GB)
Voluntary aided & foundation schools.	Governing body (unless the trust has agreed with the LA that the LA is the employer). The LA may also employ some non-teaching staff e.g. school meals staff.	GB. Some tasks can be delegated to the Head.
Academy & private schools.	Charitable company	Trust board

- Governors offer strategic guidance including:
 - Plan the school's **strategic** direction
 - Oversee the school's **financial** performance
 - Hold the school's leadership team **accountable**
 - Governing bodies can be often responsible for **staffing** matters
- The type of duties depends on the school.
 - All governors = duty to account for the educational performance of the school & its pupils
 - Maintained school = statutory duty to ensure National Curriculum is being delivered

Governor duties - staffing

Head	Governing Board
Draws up staff plans & budget	Approves plan, including what % of the budget should be spent on staff
Responsible for evaluating teaching & learning	Monitors teaching standards
Day to day management of staff	Deal with grievance/disciplinary issues at the panel stage
	Approves the discipline, conduct & grievance procedures

Disciplinary & grievances

The basics – sources of guidance

- **Disciplinary** = misconduct and/ or poor performance (the school may have a separate capability procedure).
- **Grievance** = ‘concerns, problems or complaints that employees raise with their employers’.
- Process governed by:
 - Your school’s grievance and disciplinary procedure; and
 - Acas Code of Practice (does not apply to redundancies).
- Also consider Acas Guide to discipline and grievances at work & case law.
- ACAS also provides ‘step by step’ guidance.

TIP: If helpful, quote the ACAS Code or Guide.

- **Inform the employer of the problem:** The employee should raise the grievance in writing & without unreasonable delay if the matter cannot be informally resolved.
- Hold a meeting with the employee.
- **Allow the employee to be accompanied** at the meeting:
 - The employee has a statutory right to be accompanied by a trade union representative or workplace companion if they make a reasonable request.
 - Postpone if the employer/their representative cannot attend. Employee should propose a convenient time that is within 5 working days of the original date.
 - Consider reasonable adjustments.
 - Allow the representative to address the hearing & to put and sum up the worker's case & respond on behalf of the employee. Representative has no right to answer questions.
- **Decide** on appropriate action & inform employee (consider data protection).
- Allow the employee to **appeal**.

- The Code requires the employer to:
 - **Establish the facts:** conduct an investigation meeting if necessary and collate documents. This involves looking at evidence which supports and undermines the allegation;
 - Where possible, have different people conduct the investigation and disciplinary.
 - **Inform the employee of the problem:** if there is sufficient evidence to proceed to a disciplinary, write to the employee with:
 - Details of the allegation;
 - Copies of the evidence and relevant policies;
 - Advising them of their right to be accompanied;
 - The potential consequences; and
 - The date and time of the meeting.
 - **Allow the employee to be accompanied**
 - As with grievances, employees must make the request but it does not have to be in writing.

- Decide on **appropriate action**
 - Review employee's disciplinary record
 - Review their training record – have they been made aware that the conduct is not acceptable?
 - Review your disciplinary policy for guidance
 - Sanction should be consistent with the disciplinary invite
 - Act consistently with other decisions/ensure that you can justify differences
 - Carefully justify your decision
- Allow the **employee to appeal**
 - Review your disciplinary policy for timescales & who can hear the appeal

- **Purpose:** to gather evidence, see if there is a case to answer and ensure fair treatment.
- Take notes of your discussions. Acas suggests including:
 - The date and time the meeting started;
 - Who was present & their roles;
 - That the parties were reminded of confidentiality;
 - An explanation as to how the notes will be used;
 - The time the meeting ended.
- **Disciplinarys:** different people should deal with the investigation & disciplinary, with a more senior person hearing the disciplinary.
- **Grievances:** the person hearing the grievance should normally investigate.
- **TIP:** Follow the appropriate policy/procedure.

- Employers can fairly dismiss an employee if they follow a **fair process** and rely on a **permitted reason**.
- Five permitted reasons: conduct, capability, illegality, redundancy and SOSR (s98 ERA 1996).
- Consider **what conduct** has been committed and what the allegations are.
- **Conduct**: Leading case is **British Home Stores v Burchell [1978] IRLR 379** in the EAT.
- Burchell sets out the test tribunals have to consider:
 - Did the employer have a **genuine belief** that the employee had committed the misconduct?
 - Were there **reasonable grounds** for that belief?
 - Was there a **fair** investigation and procedure?
 - Was dismissal a **reasonable sanction** open to a reasonable employer?

Mr Witts v (1) Wyre Forest and (2) Worcestershire Council [2017]

- Mr Witts was a Teaching Assistant with 19.5 years unblemished service.
- School was a state school with special needs.
- Mr Witts intervened to pull a pupil, VB, away from a door. The School characterised this as misconduct which would warrant a verbal warning.
- VB then attacked VB from behind, causing him various injuries. Mr Witts responded to the attack and VB ended up on the ground. The School determined that Mr Witts' actions amounted to gross misconduct & was contrary to their training.
- Mr Witts was summarily dismissed & issued a claim for unfair dismissal.
- EAT: As the School decided that the first conduct was minor, the matter was sent back to the ET to determine whether it was in the reasonable range of responses to dismiss Mr Witts for his action in responding to an attack from behind and the question of self-defence.

Hewston v Ofsted [2023]

- Mr Hewston was employed by Ofsted as an Inspector. During a school inspection, a group of children came inside 'soaking from the rain', and Mr Hewston brushed rain off one of the children's head and shoulders. No safeguarding issues arose.
- Mr Hewston was summarily dismissed as he had failed to exercise good judgment causing Ofsted to lose trust and confidence in him. He brought claims for unfair and wrongful dismissal.
- His claims failed at the ET, but succeeded at the EAT who found he had not been informed by a 'written policy, training or otherwise' that a single act of physical contact could result in his dismissal.
- He had also not been given key documents.
- **TIP:** Ensure that you have relevant policies, provide the employee with relevant documents and carefully consider what allegations you intend to rely on before you invite the employee to a disciplinary.

Miss Crew and Miss Mason v Three Milestone Education Ltd [2023]

- Both Miss Crew and Miss Mason were Teaching Assistants at a school for children with special or additional needs aged 7 – 16. Miss Mason was accepted to be disabled due to anxiety and depression.
- Whilst at work, they discussed getting cocaine delivered to the school. Miss Mason initially denied any involvement with drugs but then admitted that she had cocaine in her car and disclosed that her ex-boyfriend delivered the drugs near or on the school grounds during work time. Her car was searched but no drugs were found. At that point, Miss Mason admitted that her bag had been intentionally taken by Miss Crew due to the bag's contents.
- Miss Mason was investigated by the person who was the disciplinary manager for Miss Crew and vice versa. School was criticised for this approach.
- During the disciplinary, Miss Mason asked for her mother to accompany but this was refused.
- Harassment & reasonable adjustment i.e. not allowing her mother to attend succeeded. 100% reduction in compensation for Miss Crew's unfair dismissal.

School specific issues

Absent pupils

- DfE: ill or injured children's education must not suffer.
- Schools and LAs are required to support the child:
 - Provide them with remote education
 - Consider providing teaching at the hospital they attend
- If school cannot do this then the LA must arrange provision
- Quality must be similar to that they would receive in school
- Must receive 5 hours of teaching per week (for as long as health allows)
- No pupil should be without education for more than 15 working days.
- Expected absence: access to education should be in place from the start.
- If unaware of the reason for the pupil's absence use your legal powers to address poor attendance.

Poor attendance

- Persistent absences are taken into account by Ofsted.
- All schools have a duty to refer regular absence (whether authorised or not) to their LA.
- LA determines what action to take:
 - School attendance order
 - Prosecution and/or education supervision orders
 - Penalty notices
 - Parenting contracts
 - Parenting orders
- If LA takes action, it **must** carry out an investigation.

Aggressive parents

- School premises = private property
- Implied licence for parents to enter during school hours
- Licence can be withdrawn by the LA/governing body
- Must be done in writing and parents given an opportunity to respond
- Make final decision
- The decision would be open to judicial review
- Once licence is withdrawn, parent is trespassing if they attend the school

- Parents have a right to access their child's education records
- 'Parent' is defined very widely:
 - Biological parents (i.e. they appear on the birth certificate);
 - Parental responsibility (e.g. step-parent, guardian);
 - Any person who has care of a child/young person; and
 - Anyone who has a parental responsibility order.
- Check with the child's registered parents.
- Redact anything that would cause serious harm to the child's physical or mental health.

TIP: Check that when you register a child that you ask for details of all parents or people entitled to their child's education records


- The ECHR has updated its technical guidance for schools in England and Scotland.
- Schools have a legal obligation to not discriminate against, harass or victimise pupils because of a protected characteristic, which includes sex and gender reassignment.
- New guidance updates definitions:
 - ‘sex is understood as binary – being male or female – with a person’s legal sex being determined by what is recorded on their birth certificate, based on biological sex. A trans person aged 18 or over can change their legal sex by obtaining a Gender Recognition Certificate through procedures set out in the Gender Recognition Act 2004’.
 - ‘gender reassignment means proposing to undergo, undergoing or having undergone a process to reassign a person’s sex...A person can be at any stage in the transition process, from proposing to reassign sex, undergoing a process of reassignment, or having completed it. It does not matter whether or not a person has applied for or obtained a Gender Recognition Certificate, which is the legal document that enables trans people aged 18 and over to have their acquired gender recognised as their legal sex
- DfE: not yet updated its guidance.

Questions and answers

Rachel Blythe – Rachel.Blythe@wardhadaway.com
LinkedIn: www.linkedin.com/in/rachel-blythe-70b77a82

Claire Hutchinson – Claire.Hutchinson@wardhadaway.com

Thank you

 Ward Hadaway  @WardHadaway
wardhadaway.com